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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SIERRA CLUB, a non-profit California corporation,

Plaintiffs,

-vs-

ROGERS C. B. MORTON, individually and as Secretary of the Interior of the United States, et al.,

Defendants.

No. 51464

MEMORANDUM OF DECISION ON PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT

Plaintiff, Sierra Club, now moves to amend its original complaint by adding certain allegations which, according to plaintiff, meet the requirements laid down by the Supreme Court in Sierra Club v. Morton, ____U.S. ____ (April 19, 1972) for giving to organizations such as Sierra Club court standing to challenge the legality of federal administrative action.

Plaintiff also moves to amend by adding as co-plaintiffs certain individuals allegedly meeting these standing requirements.

Without setting forth at length the proposed amendments, which we have examined in the light of our careful reading of the Supreme Court opinion, we simply state our

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conclusion that the allegations fall well within what we interpret to be the meaning of the Supreme Court opinion on this subject of standing requirements.

The Supreme Court, after clearly reiterating its holding in Data Processing Service v. Camp, 397 U.S. 150 (1970), that the interest alleged to have been injured "may reflect 'aesthetic, conservational and recreational' as well as economic values," then proceeds to consider "what must be alleged by persons who claim injury of an non-economic nature to interests that are widely shared. That question is presented in this case."

The court then notes (Slip Opinion at p. 10; p. 8, note 8; p. 7, note 7) the absence from the Sierra Club's original complaint of allegations of the very kind now presented by amendment and then carefully adds: "Our decision does not, of course, bar Sierra Club from seeking in the District Court to amend its complaint by a motion under Rule 15 of the Federal Rules of Civil Procedure."

It should be noted, however, that while the Supreme Court thus apparently envisioned these curative amendments with respect to the threshold, procedural issue of standing, it omitted to resolve or even mention the Ninth Circuit Court of Appeals further ruling on the merits to the effect that, even assuming standing, plaintiff had failed to establish ground for preliminary injunction against the defendant federal agencies - a ruling made in an opinion (433 F.2d 24 (9th Cir. 1970) that goes far toward establishing the "law of the case" on the merits as far as this District Court is concerned.

It is not necessary, however, upon mere motion to amend, to consider whether for this reason further proceedings in this case may be an exercise in futility.

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Additionally, plaintiff seeks to add an entirely new cause of action based upon the National Environmental Policy Act, 42 U.S.C. § 4321, et seq., which became effective on January 1, 1970, during the pendency of this litigation.

We see no good reason why plaintiff should not be permitted to file this new and separate cause of action - subject, of course, to further consideration as to whether violation of that Act is sufficiently alleged.

It is, therefore, ordered that plaintiff's motion for leave to amend be and the same is hereby, granted.

Dated: July 6th, 1972.

W. T. SWEIGERT

W. T. SWEIGERT
UNITED STATES DISTRICT JUDGE

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